IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2561 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

S P SHAH

Versus

STATE OF GUJARAR

Appearance:

MR MM PARMAR for MR PH PATHAK for Petitioner

MR LR PUJARI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 19/02/2001

ORAL JUDGEMENT

1. The petitioner challenges the order at Annexure-A to the petition made on 1/4/1992 by the Speaker, Gujarat Legislature Secretariat repatriating the petitioner to his original post of Reporter.

2. According to the petitioner he was promoted as a Chief Reporter by order dated 28/8/1991 on the vacancy arisen due to the retirement of one Shri S.M. Mehta in the Gujarat Legislature Secretariat. By virtue of the said appointment as Chief Reporter the petitioner was entitled to draw Rs.150/- as additional pay in addition to his pay as Gujarati Reporter. The petitioner was reverted by the impugned order on the ground that he had behaved in an indiscipline manner. According to the petitioner no inquiry was held before effecting the said reversion and reversion was, therefore, violative of the provisions of Article 311 of the Constitution.

3. The learned counsel appearing for the petitioner strongly contended that the impugned order of reversion having been made without affording any opportunity of hearing to the petitioner was null and void as it violated the provisions of Article 311 of the Constitution which require hearing to be given before effecting such reversion. The learned counsel relied upon the decision of the Supreme Court in the case of K.H. Phadnis v. State of Maharashtra reported in AIR 1971 S.C. 998, in which it was held that though order of reversion simpliciter would not amount to a reduction in rank or a punishment and a Government servant holding a temporary post and having lien on his substantive post may be sent back to substantive post in ordinary routine administration or because of exigencies of service, if there is evidence that the order of reversion is not pure accident of service, but is an order in the nature of punishment, Article 311 will not be attracted. The learned counsel also argued that the impugned order of reversion amounted to double punishment because the petitioner was already imposed punishment of censure on 8/1/1992 as per order at Annexure-E to the petition made by the Speaker. It was argued that having already been punished the petitioner could not have been reverted on the ground of indiscipline.

4. It has come on record in the affidavit-in-reply filed by the Under Secretary of the Gujarat Legislature Secretariat that there were no recruitment rules for the post of Chief Reporter and only some additional duties were assigned to the senior most reporter in lieu of which he was to be given special pay of Rs.150/- per month. It is stated that there does not exist any post of Chief Reporter and, therefore, the question of promotion would not arise. Moreover, the petitioner has no right to continue as the Chief Reporter because his appointment was only temporary and until further orders.

It is stated that the Speaker had asked for explanation from the petitioner for his misbehaviour. The petitioner had talked in the name of Personal Secretary of the Finance Minister with the authority on phone. After careful consideration the petitioner came to be censured by the competent authority i.e. the Speaker. It is stated that the petitioner repeated his misbehaviour during 6th sessions of the Legislative Assembly and as a result the business of the House of the Legislative Assembly was adversely affected. The petitioner did not obey office instructions and started harassing other reporters who complained against him. The petitioner's explanation was sought by memo dated 31/1/1992, but he did not respond. The charge of Chief Reporter was therefore, withdrawn from the petitioner.

5. It is evident from the order of the petitioner's appointment dated 28/8/1991 at Annexure-B to the petition that his appointment as Chief Reported was only temporary arrangement until further orders. The petitioner, therefore, could have no right to continue as Chief Reporter and his reversion to his substantive post was clearly warranted.

6. The only aspect that remains to be considered is while reverting the petitioner to his substantive post of Reporter it was stated in the impugned order that this was done because of his indisciplined behaviour. This statement has been assailed as stigmatic. However, this order cannot to read in isolation. There was already a procedure initiated against the petitioner for his indiscipline behaviour. By the memo dated 10/10/1991, copy of which is at Annexure-C to the petition, a show cause notice was issued on the petitioner calling upon him to show cause why action should not be taken against him for the misconduct narrated in that notice in detail. The petitioner gave a reply dated 15/10/1991, a copy of which is at Annexure-C to the petition. Thereafter, the order dated 8/1/1992 was passed by the Speaker after considering the reply given by the petitioner holding that the allegations contained in the show cause notice dated 10/10/1991 were proved and that the petitioner was found guilty and a minor penalty of 'censure' was imposed on him under rule 25 (1)(a) (i) of the Discipline and Conduct Rules. The order dated 8/1/1992 was not challenged by the petitioner. Therefore, the reference to indisciplined conduct being a cause why the petitioner was being sent back as a Reporter from his temporary charge as Chief Reporter, was nothing beyond reflection of the order of 'censure' which was already made against him and there was no question of casting any fresh stigma

on him. It is evident that the impugned order dated 1/4/1992 was not intended to be a punishment and all that was done under the order was to send back the petitioner as a Reporter after he was imposed a punishment of censure due to his indisciplined conduct, for which he was given show cause notice and against which he had given the replies which were duly considered by the Speaker. In this view of the matter, the decision of the Supreme Court in K.H. Phadnis (supra) cannot assist the petitioner.

6. Since the petitioner has failed to make out any right for continuing as a Chief Reporter in view of the temporary nature of his appointment and since the impugned order of reversion was not by way of any punishment and it only reflected the indiscipline for which separate proceedings were undertaken and he was censured, the petitioner has not made out any case for continuance as a Chief Reporter. This petition is, therefore, rejected. Rule is discharged with no order as to costs.

[R.K. ABICHANDANI, J.]

* Pansala.